

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

June 25, 2014



SDMS DocID

2179971

SUBJECT: Avtex Fibers Superfund Site –
Determination of a Minor Modification to the
Remedial Action

FROM: Katherine Lose, Remedial Project Manager *KL*
DE/VA/WV Remedial Branch

TO: Site File – EPA Region III CERCLA Records Center

EPA has determined that a minor modification is necessary to the institutional controls (ICs) portion of the remedial action selected for the Avtex Fibers Superfund Site (Site).¹ EPA selected the remedial action for the Site in five Records of Decision (RODs) and two Explanations of Significant Differences (ESDs) pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The Site is located in Front Royal, Warren County, Virginia. This minor modification supplements the existing ICs portion of the remedial action by making Environmental Covenants, which would be implemented pursuant to Virginia's Uniform Environmental Covenants Act (VA UECA), §10.1-1238 *et seq.* of the Code of Virginia, available as an IC mechanism, in addition to common law Conservation Easements which were previously selected by EPA. EPA is modifying the ICs portion of the remedial action because Environmental Covenants provide greater flexibility for and overcome certain obstacles against implementation and enforcement of ICs than do common law Conservation Easements. This minor modification also acknowledges the possibility that since portions of the Site will be further subdivided, more ICs mechanisms than were specified in an earlier ESD may become necessary.

This memorandum will be incorporated into the Administrative Record in accordance with Section 300.825(a)(2) of the NCP, 40 C.F.R. § 300.825(a)(2). The Administrative Record is available for review during business hours at the information repository in the offices of EPA Region III at 1650 Arch Street, Philadelphia, PA 19103, (215) 814-3024, and at an information repository at the Samuels Public Library, 538 Villa Avenue, Front Royal, VA 22630, (540) 635-3153. The Administrative Record may also be found on the internet at:
http://loghead.epa.gov/arweb/public/search_results.jsp?siteid=VAD070358684.

I. Site History

¹ ICs are defined as non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for exposure to contamination and/or protect the integrity of a Superfund cleanup. ICs work by limiting land or resource use and/or by providing information that helps modify or guide use of Superfund sites.



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The Site is located at 404 Kendrick Lane in Front Royal, Warren County, Virginia. Figure 1 shows a map of the Site; the Site occupies approximately 440 acres. The Randolph Macon Academy is located along the eastern Site boundary. The former General Chemical plant is located along the northwest border of the Site. Residential areas are located to the east, south, and north of the Site. The South Fork Shenandoah River is located along the western portion of the Site.

Operations at the Site began in 1940, when American Viscose opened a rayon production plant. In 1963, American Viscose sold the plant and property to FMC Corporation (FMC), and, in 1976, the plant and property were sold by FMC to Avtex Fibers-Front Royal, Inc. (Avtex). Rayon fibers were continually produced at the Site until the plant closed in 1989. Polyester and polypropylene were also produced over short periods of time.

In 1982, the Commonwealth of Virginia detected carbon disulfide, a hazardous substance, in residential wells located across the South Fork Shenandoah River. Based on that observation and other observations conducted by EPA, on October 14, 1984, EPA proposed the Site for inclusion on the National Priorities List (NPL) and added the Site to the NPL on June 10, 1986. Between 1986 and 1988, Avtex conducted an investigation of the source and extent of the carbon disulfide in groundwater. The investigation determined that waste viscose containing carbon disulfide was leaching from three of the eleven viscose basins at the Site.

Over the ensuing 25 years numerous expedited cleanup actions (removal actions) and actions to implement the remedial action have been conducted to address threats to human health and the environment presented by contamination at the Site. The work to implement the remedial action at the Site, as at many other Superfund sites, was divided into smaller, manageable phases called operable units (OUs). Toward that end, EPA issued five RODs and two ESDs to address the cleanup of the Site. EPA issued the first ROD for the Site in 1988 and the final ROD for the Site on January 13, 2010. The remedial action for the Site included both engineering controls and ICs. Several of the RODs, notably those for OU8 and OU7, addressed the implementation of ICs at certain portions of the Site, since waste would be left in place after completion of the engineering cleanups. EPA also issued a second ESD for the Site to require, among other things, that ICs be implemented for the entire Site.

On July 21, 1999, the United States (on behalf of EPA) and FMC entered into a judicial consent decree (Civil Action No. 5:99CV00054) (Consent Decree) which required FMC to conduct an extensive engineering cleanup of and implement ICs at the Site.² In accordance with the Consent Decree, on December 7, 1999, the United States, the Site owner, FMC and two conservation groups entered into a Conservation and Environmental Protection Easement and Declaration of Restrictive Covenants (1999 Conservation Easement), which restricted use of a portion of the Site consistent with the completed and ongoing remedial action. The 1999 Conservation Easement is a proprietary control. Generally speaking, proprietary controls are a form of ICs, which are written agreements between the property owner (or grantor) and a second party (or grantee), where the grantor agrees to refrain from certain actions or to perform certain actions designed to protect the removal or remedial action or human health and the environment.

² The RODs, ESDs and Consent Decree are available and this minor modification will be available on EPA's public web page for the Site, which can be found at <http://www.epa.gov/reg3hwm/npl/VAD070358684.htm>.



The benefit of proprietary controls is that they can be binding on subsequent purchasers of the property (successors-in-title) and transferable.

On January 3, 2012 EPA issued an ESD (Second ESD), which modified the ICs portion of the remedial action by, among other things, expanding ICs to cover the entire Site and allowing the 1999 Conservation Easement to be replaced with four Conservation Easements.

II. Minor Modification to the ICs Portion of the Remedial Action

This minor modification does not change the restricted uses of the Site selected by EPA in the RODs and ESDs. In addition, Conservation Easements remain available as proprietary control mechanisms to implement the ICs portion of the remedial action at the Site. However, this minor modification now provides that ICs for the Site may be implemented through Environmental Covenants pursuant to VA UECA. Environmental Covenants are a form of proprietary controls which were not available at the time EPA selected the ICs portion of the remedial action.³ Environmental Covenants provide greater flexibility for and overcomes certain obstacles to the implementation and enforcement of ICs than do common law Conservation Easements. For one thing, using Environmental Covenants at the Site will provide enforcement rights to those who had not previously been afforded those rights.⁴ For another, Environmental Covenants cannot be extinguished by certain traditional legal actions, such as tax lien foreclosures and adverse possession.

This modification to the ICs portion of the remedial action also acknowledges the fact that portions of the Site can be put back into productive use, and, therefore, may be extensively subdivided beyond what was contemplated in the Second ESD. Toward that end, this modification to the ICs portion of the remedial action acknowledges that more than the four proprietary controls specified in the Second ESD may be necessary to implement fully the IC portion of the remedial action at the Site.

³ Virginia enacted UECA in 2010.

⁴ In addition to granting enforcement rights to EPA as the approving agency and the holders (grantees) of the Environmental Covenants, VA UECA also grants enforcement rights to anyone whose interest in the real property or whose collateral or liability may be affected by alleged violations of the Environmental Covenants and the local government in which the real property subject to the Environmental Covenants is located.



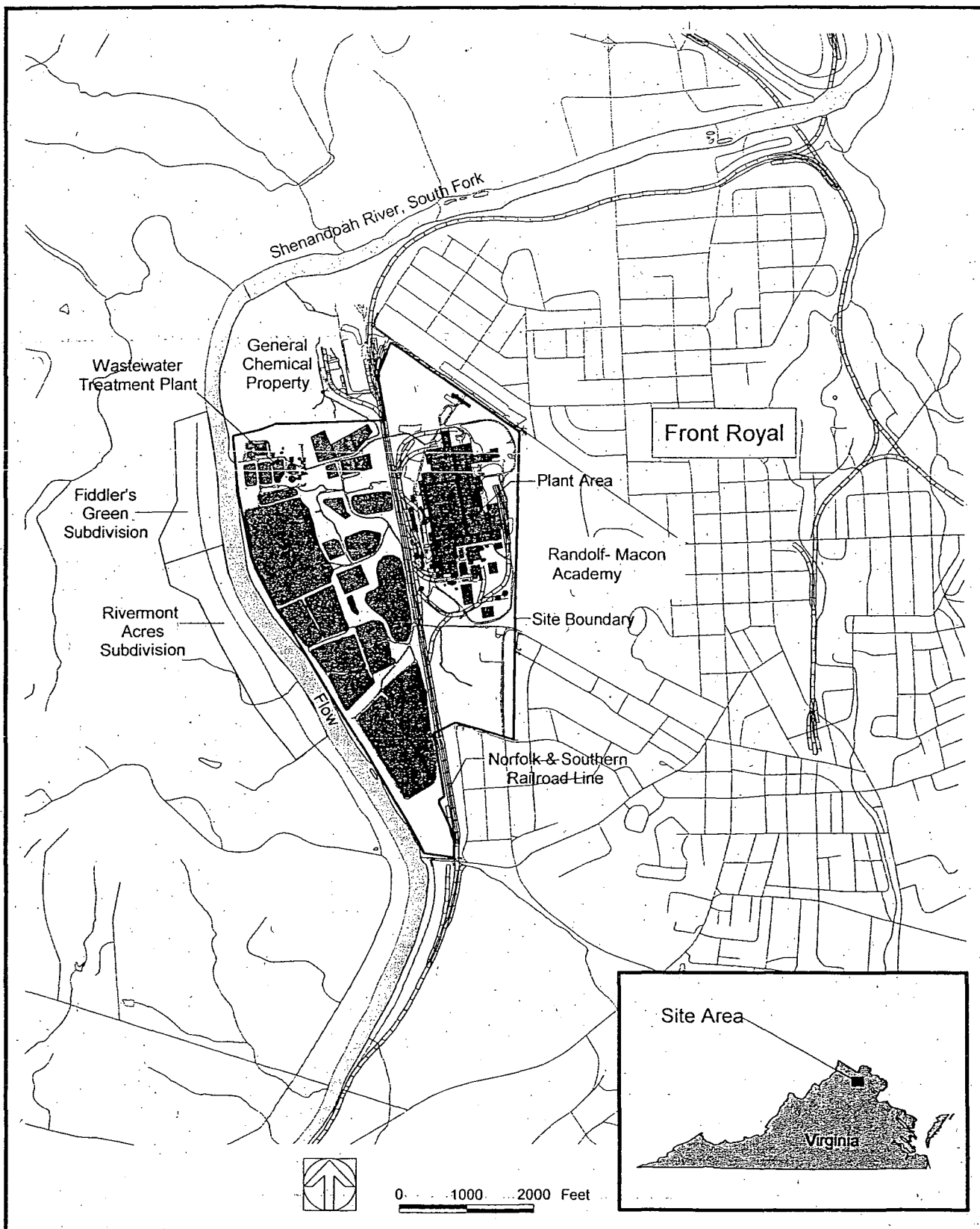


Figure 1-1. Avtex site map.